

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT GREENEVILLE

UNITED STATES OF AMERICA )  
 )  
v. ) No.: 2:98-CR-006  
 )  
HARVEY E. PAGE )

**MEMORANDUM AND ORDER**

This criminal case is before the court on the defendant's *pro se* motion for sentence reduction [doc. 477], as supplemented by the briefing of counsel [docs. 480, 488]. The defendant seeks a lowered sentence pursuant to 18 U.S.C. § 3582(c)(2) and in accordance with Amendments 782 and 788 to the United States Sentencing Guidelines Manual ("U.S.S.G."). The prosecution has responded [doc. 479], deferring to the court's discretion whether and to what extent to grant any such reduction, subject to the limitations of 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10.

## I. Authority

“Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions.” *Freeman v. United States*, 131 S. Ct. 2685, 2690 (2011) (internal citation and quotation marks omitted). One such exception is identified in 18 U.S.C. § 3582(c)(2):

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . , the court may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

If the court finds a defendant eligible for sentence reduction, “[t]he court may then ‘consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a).’” *United States v. Thompson*, 714 F.3d 946, 949 (6th Cir. 2013) (quoting *Dillon v. United States*, 560 U.S. 817, 826 (2010)).

In determining whether a defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, the court must first identify “the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing.” *Dillon*, 560 U.S. at 827 (internal quotation marks and citation omitted); *see also* U.S. Sentencing Guidelines Manual § 1B1.10(b)(1) (2014). Amendment 782, which became effective on November 1, 2014, revised the guidelines applicable to drug-trafficking offenses by reducing the offense levels assigned to the drug and chemical quantities described in guidelines 2D1.1 and 2D1.11. *See* U.S. Sentencing Guidelines Manual app. C, amend. 782 (2014). Amendment 788, which also became effective on November 1, 2014, identified Amendment 782 as retroactive. *See id.*, amend. 788.

Other than substituting Amendment 782 for the corresponding provision applicable when the defendant was originally sentenced, the court “shall leave all other guideline application decisions unaffected.” *See id.* § 1B1.10(b)(1) (2014). The court “shall not” reduce a defendant’s term of imprisonment to a term “less than the minimum of the amended guideline range,” nor to a term “less than the term of imprisonment the defendant has already served.” *Id.* § 1B1.10(b)(2)(A), (C).<sup>1</sup> In addition, the commentary to guideline 1B1.10 provides that a court must also consider the § 3553(a) sentencing factors and the danger to the public created by any reduction in a defendant’s sentence. *See id.* cmt. n.1(B). A court may further consider a defendant’s post-sentencing conduct.

*See id.*

## **II. Factual Background**

Following a jury trial, the defendant was sentenced on March 8, 1999, by the Honorable Thomas G. Hull to 360 months in prison on Count One (conspiracy to distribute cocaine base). After a remand by the Sixth Circuit Court of Appeals, *United States v. Page*, 232 F.3d 536 (6th Cir. 2000), the defendant’s sentence was reduced to 240 months.

Under the 1998 version of the sentencing guidelines, the defendant’s total offense level was 38, his criminal history category was VI, and his guideline range was 360

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<sup>1</sup> Guideline 1B1.10 provides one exception to the rule that a defendant may not receive a sentence below the amended guideline range—namely, if the defendant originally received a below-guideline sentence “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities.” *Id.* § 1B1.10(b)(2)(B). The government did not file a substantial assistance motion as to this defendant.

months to life. The defendant is also a career offender under the guidelines. However, the drug quantity for which he was held accountable dictated a higher offense level than what would have resulted from application of the career offender guideline. *See U.S. Sentencing Guidelines Manual § 4B1.1(b).* The defendant's guideline range was therefore based on his drug quantity and not his status as a career offender. *See id.* Additionally, after the Sixth Circuit's remand, the defendant was subject to a statutory maximum sentence of 240 months. According to the Bureau of Prisons, the defendant is presently scheduled for release on August 5, 2016.

### **III. Analysis**

Applying Amendment 782, the defendant's new guideline range is 210 to 240 months, based on a total offense level of 32, a criminal history category of VI, and the 240-month statutory maximum. Thus, the defendant was originally sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.<sup>2</sup>

The court has considered the filings in this case, along with the relevant 3553(a) factors. Additionally, the court has considered the danger to the public as the result of any reduction in the defendant's sentence, the seriousness of the defendant's offense, the defendant's post-sentencing conduct, and the need to protect the public. *See id.* § 1B1.10

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<sup>2</sup> As a career offender, the defendant's total offense level would now be 32. Applying Amendment 782, the defendant's drug quantity also produces a total offense level of 32. Therefore, the defendant's new guideline range is not based on his status as a career offender. *See U.S. Sentencing Guidelines Manual §§ 2D1.1(c)(4), 4B1.1(b)(3) (2014).*

cmt. n.1(B)(ii), (iii). Having done so, the court finds that the defendant should be granted a sentence reduction.

#### **IV. Conclusion**

For the reasons stated herein, the defendant's motion [doc. 477] is **GRANTED**. The defendant's term of imprisonment is reduced to **210 months**. If this sentence is less than the amount of time the defendant has already served, the sentence shall instead be reduced to "time served." *See id.* § 1B1.10(b)(2)(C).

Except as provided above, all provisions of the judgment entered March 11, 1999, shall remain in effect. **The effective date of this order is November 2, 2015.** *See id.* § 1B1.10(e)(1).

**IT IS SO ORDERED.**

ENTER:

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s/ Leon Jordan  
United States District Judge